

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6273 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.

2. To be referred to the Reporter or not? NO.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

-----  
BHARATIBEN DALSHUKHBHAI MAKWANA D/O MAFATBHAI PARMAR

Versus

STATE OF GUJARAT

-----  
Appearance:

MR DP KINARIWALA for Petitioner

MR KP RAVAL APP for Respondent No. 1

MR ASHOK K PADIA for Respondent No. 2

-----  
CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/04/98

ORAL JUDGEMENT

The applicant who has been arraigned as accused No.1 has filed this application under Section 482 of the Criminal Procedure Code, 1873 ( to be referred to as " the Code" ) to quash the Criminal Case No.609/97, filed by the respondent No.1 in the Court of learned Judicial Magistrate First Class, Chanasma, and the order of issuance of summons against the petitioner and others for

the offences punishable under Sections 494, 497 and 114 of the Indian Penal Code.

2. Marriage between the applicant and opponent No.2 had taken place before 15 years at Ahmedabad and out of the wedlock, two children were born at Ahmedabad. It is the case of the applicant that in the month of October 1996 she was operated for the Appendicitis and on that occasion she had gone to her parents house, and thereafter, she was not called by her husband. It is the case of the applicant that whenever she requested the opponent No.2 to call her, he under one pretext or other avoided calling the applicant at her matrimonial house. The applicant, therefore, filed H.M.P. No.14/97 in the City Civil Court, Ahmedabad for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. It appears that the petitioner had also filed application under Section 125 of the Code for maintenance in the Court of learned Metropolitan Magistrate Court No.10, Ahmedabad.

3. Applicant has averred that thereafter just to harass her and her family members, respondent No.2 filed a complaint in the Court of learned Judicial Magistrate First Class, Chanasma for the offence punishable under Sections 494, 497 and 114 of the IPC

4. It is contended by the learned counsel for the applicant that the cause of action in this case had arisen in Ahmedabad, and therefore, the complaint lodged at Chanasma is without jurisdiction. Learned counsel for the applicant has placed reliance on Section 177 of the Code which reads as under :

177 Ordinary place of inquiry and trial :Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Reading the complaint, it appears that the applicant had entered into second marriage with the original accused No.9 at Ahmedabad. It is alleged that the other accused persons who are close relatives of the applicant had created and aided the applicant in contracting the second marriage. Reading the complaint, *prima facie*, it appears that the cause of action i.e. entering into the second marriage with the original accused 9 by the applicant has occurred in the City of Ahmedabad, and therefore, the Court of Chanasma will have no jurisdiction to entertain the complaint. Therefore, the issuance of summons by the learned Judicial Magistrate First Class, Chanasma, is

without application of mind, and therefore, it is liable to be quashed and set aside.

5. In my view the cause of action had arisen at Ahmedabad, and therefore, the learned Judicial Magistrate First Class, Chanasma had erred in taking cognizance of the complaint and issuing summons against the applicant and other accused. Under the circumstances, the summons issued by the learned Judicial Magistrate First Class, Chanasma, pursuant to the complaint filed by the opponent No.2 will have to be quashed and set aside.

6. Having decided to quash the process issued by the learned J.M.F.C., Chanasma, the question that arises for consideration of the Court is as to whether the Criminal Case No.609/97 registered pursuant to the complaint of the opponent No.2 should be quashed or any further consequential order should be passed in the interest of justice.

7. Mr. K.P.Raval, learned APP, submitted that the Magistrate has failed to exercise powers under Section 201 of the Code, and therefore, this Court should transfer the case to the learned Magistrate having jurisdiction in the matter, in exercise of powers under Section 407 of the Code.

8. In order to examine the plea advanced by the learned APP, it would be relevant to refer to Section 201 and 407 of the Code. Section 201 of the Code reads as under :-

Sec.201 :- Procedure by Magistrate not competent to take cognizance of the case.

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall

- (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect ;
- (b) if the complaint is not in writing, direct complainant to the proper Court.

Whereas Section 407 of the Code is as follows :

Sec. 407 : Power of High Court to transfer cases and appeals-

- (1) Whenever it is made to appear to the High

Court-

- (a) that a fair and impartial inquiry or trial cannot be held in any Criminal Court subordinate thereto ; or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of that parties or witnesses, or is expedient for the ends of justice.

It may order :-

- (i) that any offence be inquired into or tried by any Court not qualified under Sections 117 to 185 (both inclusive ), but in other respects competent to inquire into or try such offence ;
- (ii) that any particular case or appeal or class of cases or appeals, be transferred from the Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;
- (iii) that any particular case be committed for trial to a Court of Sessions ; or
- (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interest, or on its own initiative.

9. As a general rule a complaint can be quashed only if it does not disclose commission of offence alleged in it. The point whether the complaint filed by the opponent No.2 discloses commission of any offence under Section 494, 497 and 114 of the Indian Penal Code is not examined at the request of learned counsel for the applicant is kept open. If the complaint is quashed, the opponent No.2 would not be entitled to file a fresh complaint for the alleged commission of offence under Sections 494, 497 and 114 of the Indian Penal Code. Therefore, it appears to this Court that it is expedient for the ends of justice to transfer the case to the Court of Metropolitan Magistrate, Ahmedabad, having jurisdiction in the matter. Under 407 (1), the High Court has power to transfer a particular case from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction.

The power under sec. 407 can be exercised by High Court on its own initiative and this is quite evident from provisions of Sec. 407 (2) of the Code. The request made by learned APP appears to be just and proper more particularly when the learned Judicial Magistrate First Class, Chanasma, failed to exercise jurisdiction under sec. 201 of the Code. Taking into totality of facts and circumstances of the case, in my view ends of justice would be served if the Criminal Case No.609/97 pending on the file of learned Judicial Magistrate First Class, Chanasma, Ahmedabad is ordered to be transferred to the Court of Chief Metropolitan Magistrate, at Ahmedabad.

10. For the foregoing reason, the application partly succeeds. The summons issued by the learned Judicial Magistrate First Class, Chanasma, in Criminal Case No.609/97 is hereby quashed and set aside. The prayer to quash Criminal Case No.609/97 registered pursuant to the complaint filed by the opponent No.2 is rejected. Criminal Case No.609/97, pending on the file of learned Judicial Magistrate First Class, Chanasma, is ordered to be transferred to the Court of Chief Metropolitan Magistrate, Ahmedabad. The learned Chief Metropolitan Magistrate, Ahmedabad is directed either to try the case himself or to transfer the case to any other learned Magistrate having jurisdiction in the matter. On case being transferred, necessary intimation shall be sent to the opponent No.2, who is original complainant and, thereafter, the learned Metropolitan Magistrate shall proceed with the matter in accordance with law. Rule is made absolute to the aforesaid extent.

\* \* \* \*

(mithabhai )